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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,377	03/31/2004	Frank Liebenow	P2006US00	5487
24333	7590	12/10/2007	EXAMINER	
GATEWAY, INC.			TSEGAYE, DANIEL	
ATTN: Patent Attorney			ART UNIT	
610 GATEWAY DRIVE			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/814,377	Applicant(s) LIEBENOW, FRANK	
	Examiner DANIEL TSEGAYE	Art Unit 2629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11/09/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-39.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).


10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.


CHAN H. D. NGUYEN
SUPERVISOR, APPEAL EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because of the same reasons set forth in the last office action: The arguments presented by applicant are not persuasive. Applicant argues that the claimed limitation "setting an element of an electronic ink display to one of a plurality of display states; modifying the display state of the element by writing to the display with an external device; and electronically reading the element to determine if the display state has been modified". However Mikkelsen clearly teaches setting an element (black or white state) of an electronic ink display to one of a plurality of display states (see, col. 6, lines 9-11 lines 32-34); modifying the display state of the element by writing to the display with an external device (change the display state to black or white of the element (200) by writing to the display with an external device (e.g., hand or stylus (340), see col. 5, lines 54-58); and electronically reading the element to determine if the display state has been modified (e.g., image storage properties of the gyricon the charge one the display state is changed, see col. 6, lines 21-30). That reads on the first claimed.

Applicant argues that Mikkelsen doesn't teach a computer readable medium including instruction operable to cause at least one programmable processor to read an element to determine the display state, and store the display state read in memory. However, the examiner disagrees with applicant's statement/assererion. Mikkelsen teaches electric paper can be used in computer system. The computer of Mikkelsen can drive or read the element to display the image (i.e. display state). The display image can be stored in the memory as conventional way. As to Applicant argument about combining Mikkelsen and Perrone, both reference are from the same field of endeavor. As to Applicant argument; 1) Mikkelsen does not disclose an electrophoretic display, as suggested; 2) the "reason" presumes that the "reading electrophoretic display" technology of the Mikkelsen reference; and 3) "decaying the image quickly once the addressing voltage to the display is removed, thereby the update image can be viewed in sufficient time. In regard of the first arguments, both Mikkelsen and Jacobson teach encapsulated bistable state. In regard of the second argument, since both references teach about encapsulated bistable state [0006] in Jacobson and col. 6, lines 5-1 in Mikkelsen. Thus, it would have been obvious to combine both references. Inregard of the third argument, it's logical to combine Mikkelsen and Jacobson because decaying the image quickly once the addressing voltage to the display is removed for changing the bistable state from white to black or from black to white.